United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1087

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P/S.

To be argued by
WILLIAM C. HERMAN

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,
Appellee,

-against-

WONG WAH, a/k/a WAH WONG,
Defendant-Appellant.

On Appeal from Judgment of the United States District Court for the Southern District of New York

BRIEF ON BEHALF OF DEFENDANT-APPELLANT WONG WAH

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee, -against- WONG WAH, a/k/a WAH WONG, Defendant-Appellant.	Docket No.: 76-1087 (1094)

STATEMENT PURSUANT TO RULE 28(3)

PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction rendered February 11, 1976 in the United States District Court for the Southern District of New York (Brieant, J.) convicting Appellant Wah after trial of 29 counts of bribery in violation of Title 18 U.S.C. Sections 201(B) and 2 and conspiracy to commit said crimes. Appellant Wah was sentenced to three years imprisonment and has been granted a stay of execution of this sentence pending the determination of this appeal.

QUESTIONS PRESENTED

1. Whether the improper curtailment of Wong Wah's cross examination of the Government's chief witness deprived him of his constitutional right of cross examination under the Sixth Amendment.

2. Whether the deluge of prejudicial testimony concerning Ong's exploits deprived appellant Wah of his due process right to a fair trial.

STATEMENT OF FACTS

Appellant, Wong Wah, and his three co-conspirators (Benny Ong, Albert Young, and Tom Hom) proceeded to trial on November 17, 1975 before the Hon. Charles L. Brieant on a 99 count indictment charging them with multiple counts of bribery in violation of Title 18 U.S.C. Sections 201 (B) and 2 and conspiring to commit this crime.

It was the Government's position that the defendants had conspired to bribe two Criminal Investigators of the Immigration and Naturalization Service in order to induce them not to search their respective premises for illegal aliens. Additionally, it was alleged that the defendants did in fact give money to these Investigators on certain specified dates. The thrust of both Appellant Wah's and Ong's defense was that they paid this money only to terminate the Investigators' illegal raids and the harassment of their premises. They alleged essentially that they were coerced into making these payments.

According to the Government, the instigator of the conspiracy was Benny Ong, who was the proprietor of the gambling house at 9 Pell Street. On October 14, 1973,

Defendant Ong made his first contact with Criminal Investigators Granelli and Brattlie. He suggested that a meeting be set up between the gambling houses in Chinatown and officials from the Immigration and Naturalization Services. At this meeting, Ong reported that an arrangement could be worked out for apprehending illegal aliens in the various gambling houses. The Investigators later learned from Ong that at least 8 gambling house bosses would be willing to pay $200 each week to Immigration officials in exchange for advance warning of their visits to their gambling houses (62-65).*

Thereafter, on November 6, 1973, Granelli and Kibble entered Ong's house and asked who among the other eight would go along with the deal (69). Two days later, Ong informed the Agents that his house, the Catherine Street house (Defendant Young's place) and the 58 East Broadway house (Appellant Wah's establishment) would go along with the $200 per week offer (73). Ong explained that the bosses of the other gambling houses only wanted to pay $100 per week (73).

It was on November 15th that Ong, who was accompanied by Appellant Wah, made the first payment to Granelli of

*Refers to pages of the trial transcript

$400 to cover both their houses. At subsequent meetings, Ong would usually be the one to give the money to the Investigators. On only two occasions did Appellant Wah actually hand the money to the Agents. Defendant Hom did not join the alleged conspiracy until January 17, 1974. He had initially approached the two Investigators on the street and asked how much they wanted (168). Because of this encounter, the Agents expressed their annoyance to Ong and stated that such an approach could have gotten them in trouble. Ong acknowledge that it was a stupid thing to do but asked if Hom could have the same deal. Later that same evening, Ong introduced the Agents to the Defendant Hom, who apologized for approaching them on the street and stated that he wanted the same deal (169-170). Hom thereafter made ten payments directly to the two Investigators. In June of 1974, Ong made the payments in behalf of Hom. Although Ong was present tendering his own and/or Wah's payments when Hom gave his money to the Agents, there is no indication on this record that Hom or Appellant Wah had anything to do with one another in regard to the making of the payments. They only knew one another and were aware that each were making their respective payments.

Through the direct examination of Investigators Granelli and Kibble, and the taped conversations, the jury was permitted to hear a deluge of prejudicial evidence that emanated primarily from the Defendant Ong.

During the course of the many meetings, Ong continually bragged to Granelli and Kibble about his many contacts in the Police Department. He boasted that he was a "big shot" with the Police and had been paying them off for 20 years. He also boasted that he knew the former Police Commissioner Murphy, had dinner with him and on one occasion gave him airline tickets to go on vacation (147, 98, Tr. Ex pp. 9-11). In the same vein, he claimed he also knew Commissioner Codd (147). Additionally, Ong asserted that he knew the former Chief of Detectives, Albert Seidman, and had furnished him with Oriental women and liquor.

Investigator Granelli was also permitted to recount repeatedly Ong's story regarding the $5000 that Defendant Young owed to a Police Inspector and how he failed to make timely payments (103, 143, 149). Although this testimony was excluded as to Appellant Wah, the jury nevertheless was instructed to consider it as bearing on Ong's predisposition to commit such a crime and to show Defendant Young's relationship to Ong (103).

At one point in the trial, the Government made an offer of proof regarding certain conversations concerning narcotics and maintained that this evidence should be admissible to demonstrate that Defendant Ong and Appellant Wah were not coerced into making the payments to the Investigators. Counsel for Appellant Wah in turn argued that even if they were the worst dope dealers in the world, it had nothing to do with the present charges. The Court ruled that such evidence might be admissible against Ong and Appellant Wah only on rebuttal (157-161). However, on the Government's direct case, the jury heard a discussion about the two pounds of "white stuff" that was found in Frankie's barber shop which was worth $20,000. Ong at this time ventured the opinion that Frankie was stupid for leaving it there (Tr. Ex. 42, pp. 2-4). Again on both February 6th and 7th, the two Investigators engaged Ong in another conversation concerning narcotics. On the 6th, Ong told them about Lee Louis as a person they should catch as he had a lot of that "white stuff," (Tr. Ex. 46, pp. 5-7) and on the 7th, Granelli asked Ong if Frankie Wong could be trusted to sell them a kilo (Tr. Ex. pp. 1-2).

Before the transcripts of the taped conversations were offered in evidence, Appellant Wah moved to strike those portions of the transcript that made any reference to narcotics. The Court denied the motion (323).

On February 27th, Ong proposed a new scheme to the Agents. He told the Agents about a new mahjong parlor that had just opened where many illegal aliens could be found. Ong suggested that they arrest these illegal aliens and then contact him. He would tell them that instead of paying $300 for bail money and a lawyer, they could pay $200 to Granelli and Kibble. When Defendant Young moved for a mistrial or alternatively moved to strike this testimony as not being in furtherance of the conspiracy, the Court denied the motion for a mistrial but reserved decision on the motion to strike.*

Subsequently, on March 6th, Ong told Granelli and Kibble that several police officers had been arrested in Brooklyn and had accused him of giving them money. Ong stated that he was not worried as they had no proof. When Granelli asked Ong why he took the chance of approaching them, Ong

*It should be noted that at the outset of the trial, the Court stated that an objection on behalf of one defendant would inure to the benefit of all the defendants.

replied that he could look at someone's face to determine if they were straight or not (199).

At another meeting (March 13th), Ong talked about a Police Officer named Bill Miller. Ong represented that every time he talked with Miller he would search him because Miller kept a recorder. According to Ong, if he gave Miller any money, Miller would put it in the property clerk's office and would have him arrested.

Finally, Ong told the Agents on April 7th that he had been arrested by the Police from Nadjari's office. At this juncture the Court denied a motion for a mistrial but instructed the jury that they were not to speculate as to what Ong had been arrested for (211). When Granelli asked whether he had been taking care of the Police, Ong responded that he had been but "These are special - these are from Nadjari." (213) Ong then told the Agents that the Police were looking for Appellant Wah, but Wah had run away. Immediately, Appellant Wah moved for a mistrial and to strike said testimony. The Court denied the motion for a mistrial but ordered the testimony stricken (212-13). It was thereafter elicited that on June 12th, Ong told the

Investigators that Nadjari kept asking him if the 5th Precinct runs everything (229).

The Cut-Off of Appellant Wah's Cross Examination of Investigator Granelli

In the midst of the cross examination of Investigator Granelli, appellant's counsel attempted to ask him the following questions:

Q. When you had all conversations after November 15, 1973 with the various defendants where you were wearing an electronic device, you sought, did you not, to control and manage those conversations?

MR. KURIANSKY: Objection.

THE COURT: Sustained.

Q. Didn't you in one of those conversations ask Mr. Ong in the absence of Mr. Wong whether Mr. Wong couldn't deal in narcotics for you?

THE WITNESS: Your Honor, I have been told I can't refer -

THE COURT: No, don't volunteer information, please. I am sustaining this objection. No more questions along this line. Members of the jury, disregard these questions. Don't assume that just because a question is asked and the objection is sustained that if the Court allowed it to be answered the answer would be yes. Don't draw that kind of an inference. Put it out of your mind completely.
No more of this, Mr. Herman.

MR. HERMAN: Well, may I --

THE COURT: Finish up.

MR. HERMAN: May I have a side bar conference, Your Honor?

THE COURT: No sir, finish your cross examination.

MR. HERMAN: Most respectfully, Your Honor, the testimony is --

THE COURT: I won't hear a speech from you. You will either put another question and finish your cross examination or you will sit down.

Q. Did you tell Mr. Ong that you had people who were eager to get narcotics from Johnny Wong?

THE COURT: Take your seat, sir. Take your seat, Mr. Herman.

(Mr. Herman took his seat at counsel table)

After his client had been convicted as charged, counsel moved to set aside the verdict on the ground that his cross examination of the Government's chief witness had been improperly curtailed. On January 13, 1975, Judge Brieant heard arguments on this motion.* At this time, Appellant Wah's counsel asserted the following:

> I was seeking by the particular questions in mind to develop the frame of mind and the turn of mind and the intention of Agent Granelli, which we believe we could have shown was coercive and resulted in coercion against Mr. Wah, causing him to make the payments.

---

*Minutes of 1/13/76 are set forth in the Appendix

Also, I wished to develop at that time that there was no basis for Agent Granelli to be talking about narcotics and associating a narcotics deal with Mr. Wah, and I believe that the testimony in this jurisdiction, against a person of the Chinese race, is inherently prejudicial to him and that we should have been allowed, once this tape had been allowed in evidence, we should have been allowed to develop it.

And so, by virtue of the cross examination being cut completely short, at that point I was deprived of the opportunity to cross examine on numerous other matters and areas, and while I appreciate that the Court has an obligation to expedite trials - -

THE COURT: You weren't cut off in order to achieve expedition, let me assure you of that.

MR. HERMAN: Well, I believe, Your Honor, that certainly my cross examination would have been reasonably extensive. On the chronological or factual basis, there was an enormous amount of material which had not been touched upon at all in my cross examination and which I think -- for example, just if I can mention one, there was direct testimony by Agent Granelli about having overheard on November 6th a small portion of a conversation between Agent or Investigator Kibble and Mr. Wah, and that conversation would have taken place some nine days prior to the first payment. He gave testimony on direct examination. I was not permitted, not permitted, to cross examine to the point where I would have cross examined with

> respect to that conversation, and then when Agent Kibble testified, Agent Kibble, who was the man who allegedly heard him having that conversation, gave no testimony with respect to that occurrence.
> I think the deprivation in cross examination with respect to that incident was all important and it touched upon my argument, as I argued the case to the jury that Mr. Wah stood in a different position from all of the other defendants in the case (min. of 1/13/76, pp. 5-7).

The Government in turn responded that the ruling of the Court had been correct and that the Court in restricting the mentioning of the narcotics was only protecting the rights of the defendants (id. at p.9). The Government further asserted that the Court did not curtail cross examination, but when counsel persisted in his attempts to question the witness on collateral matters, the Court properly stopped his cross examination (id. at p. 10).

Whereupon, the Court ruled:

> Gentlemen, I would like to deal first with the question of the curtailment of cross examination because that presents a sensitive question to the Court, and I would say to all of you, Mr. Herman is highly regarded by this Court. His courtroom manner is excellent. He is not one who would be characterized as disruptive or anxious to

bait the Court in front of the jury, and the Court has no quarrel with Mr. Herman at all and certainly did not at the time of this trial.

I would say that, starting at the beginning of this issue of the cross examination, the Court had redacted all of the incriminatory material about narcotics or about fixing District Attorney Mackell or effecting a fix with the aid of District Attorney Mackell and there is other inflammatory things that were on the tapes, where motions were made in that regard.

Some narcotics discussion remained on the tapes because I assume counsel thought it exculpatory. Either that or perhaps through neglect. Whatever it be, I think there are some basic rules in the trial of any case, in any Court that I know of, that the Court cannot permit its rulings on objections to be flouted. If somebody asks a question and the Court makes a ruling, the record is then clear, if an objection to that question has been sustained, the attorney has done all that he needs to do and here, in this situation, the record clearly shows that attorney Herman asked a question about narcotics, about an effort on the part of the witness to involve a person in a narcotics deal, an objection was sustained. He came back immediately and reframed the identical question.

"Didn't you in one of those conversations ask Mr. Ong, in the absence of Mr. Wong Wah, whether Mr. Wong Wah couldn't deal in narcotics for you?"

The witness had been admonished previously that he couldn't talk about narcotics, so he tried to assist the Court by saying that he had been told that he couldn't refer -- and he was cut off before he mentioned the word "narcotics." "Your Honor, I have been told that I can't refer --"

The Court instructed the witness not to volunteer information and again sustained the objection and specifically instructed Mr. Herman, "no more questions along this line," this line being discussions about narcotics.

The jury was then told to disregard the testimony and not to assume the question would call for an affirmative answer, and at that point I said to Mr. Herman, "No more of this."

And then Mr. Herman attempted to argue that point in front of the jury. There was no purpose of a side bar conference at that time because it is clear, I think to almost anybody in the practice of law, that when an objection has been sustained to a question there is absolutely no license to come in the back door with the same question reframed, not a first time, but a second time and apparently here a third time.

And Mr. Herman was specifically instructed not to make a speech in front of the jury and put another question and finish the cross examination or sit down.

What did he do? He came back immediately and asked the same question. I think this would be a third or fourth time.

"Did you tell Mr. Ong that you had people who were eager to get narcotics from Johnny Wong?"

Now, that is the very same identical question which had been asked two times before and as to which an objection had been sustained twice. There was nothing disrespectful about Mr. Herman's manner in doing so. Had there been, the Court would have found it a proper situation for disciplinary action. There was no point in having a side bar conference because had I conducted a side bar conference I would have been compelled to tell Mr. Herman, in effect, "You know better," and I did not come down here to criticize or revile or complain about practicing lawyers. It is not my practice to get into controversy with lawyers or threaten lawyers with the contempt power of the Court or given to any acrimony. But one thing is clear to me, when an objection has been sustained twice, no lawyer has the right to come back and ask that very same question the third time around. I won't tolerate it. I have a right to maintain the effectiveness of my evidentiary rulings before the jury and not get into a situation before the jury where my rulings are being fluoted by an attorney or where it appears to the jury that there is a question of who is in charge here.

> So I just simply don't have to tolerate it and I want the Court of Appeals, when they look over this record, to know why the Court terminated Mr. Herman's cross examination.
>
> Mr. Herman had an opportunity for re-cross examination of the next witness. At no time during the trial did Mr. Herman ever, including every side bar conference, dicussions that we had in the absence of the jury, ever until today state that there was some particular area that hadn't been covered by the grinding cross examination of the other attorneys, which was extremely thorough, that had been missed by them, or that he wanted to touch upon.
>
> The jury had been instructed that all cross examination redounded to the benefit of every defendant, and I want my position in this matter to be entirely clear on this record. If I were confronted with the same problem I would do it again, and but for the high regard in which I hold Mr. Herman and but for the fact that his manner was not disruptive or insubordinate toward the Court, I would have felt that this type of conduct, of asking the same question over again a third time after two adverse rulings, is reprehensible and calls for sanction by the Court.
>
> Now, that is the end of that one.

Counsel responded first, that he did not believe the questions he had asked of the witness were identical (id. at p. 15). And second, that he had an obligation to press certain matters on cross examination lest he later be found by an Appellate Court to have waived those matters (id. at pp. 15-16).

ARGUMENT

POINT I

THE IMPROPER CURTAILMENT OF WONG WAH'S CROSS EXAMINATION OF THE GOVERNMENT'S CHIEF WITNESS DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT OF CROSS EXAMINATION UNDER THE SIXTH AMENDMENT.

Throughout this entire trial, the Government was permitted to bombard the jury with a flood of prejudicial evidence concerning Ong's corrupt activities (see Point II). In its direct case, the Government's proof ran the gamut of establishing Ong's arrest by Special Prosecutor Nadjari to discussions between Ong and the Agents concerning narcotics. Yet, when appellant sought to cross examine Investigator Granelli regarding his attempt to transact a narcotic deal with Ong, the Court steadfastly refused to permit such questions. Because counsel was of the firm opinion that such questions were critical to his client's case, he attempted to reframe his questions in order that they would meet with the Court's approval. His attempts, however, were met by a summary order from the Court to cease all cross examination and sit down. Hence, Appellant Wah was deprived of his fundamental right to confront the chief witness against him.

Douglas v. Alabama, 380 U.S. 415 (1965); Pointer v. Texas, 380 U.S. 400 (1965); Brookhart v. Janis, 284 U.S. 1 (1966); United States v. Brasco, 516 F.2d 816 (2d Cir. 1975); United States v. Crosby, 294 F.2d 928 (2d Cir. 1961).

At the outset, it must be made clear that appellant's cross examination of Granelli was perfectly legitimate. The issue of narcotics was injected into the Government's direct case. The jury had listened to tapes wherein Granelli and Ong in the presence of appellant discussed the large seizure of drugs at Frankie Wong's barber shop. Another discussion at a different time was had among the men concerning the large amounts of narcotics which Louis Lee possessed. And more important, the Court had previously ruled that the Government could use even more damning evidence concerning narcotics on rebuttal against both Ong and appellant. Since the door was left wide open for the Government to use such evidence, counsel had every right to take the initiative to discredit Granelli on this very subject. Moreover, counsel not only had the right but the obligation to allay any suspicion the jurors might entertain that his client was in some way connected with narcotics.

Aside from the fact that the issue of narcotics was already in the case, counsel should have been permitted to

ask the pertinent question concerning whether Granelli had tried to induce Ong into a narcotic deal. The whole thrust of the defense, as demonstrated by their opening and closing statements to the jury, was that the two Investigators coerced the defendants into the bribery scheme. It was thus critical to this defense to demonstrate that these same Agents were attempting to coerce appellant Wah and Ong into a narcotics scheme as well. Significantly, counsel in asking Granelli about Wong was not probing in the dark. He had a solid basis of fact for such a cross examination as the tapes of February 7th conclusively establish that Granelli had asked Ong if Wong could be trusted to sell him a kilo.

Considering all these factors, there can be no question but that counsel's cross examination of Granelli was indeed proper and should not have been curtailed. What is so particularly egregious about the termination of the cross examination is the Court's adament refusal to permit counsel to make an offer of proof regarding the basis for his cross examination in this area. At the very least, counsel should have been allowed to explain precisely why such an examination was critical to his case. However, counsel was automatically cut off and ordered to sit down.

Unfortunately, it appears that a double standard was permitted to prevail in this case. While the Government was permitted to introduce a voluminous amount of what could be deemed prejudicial and irrelevant testimony into the case, defense counsel was immediately thwarted in his attempts to introduce testimony, via his cross examination, which was relevant to his client's case, although perhaps prejudicial to his co-defendants' cases. However, it has been repeatedly recognized that such are the pitfalls of a joint trial. It is certainly unfair to permit the Government great leeway in presenting evidence as against one defendant which might adversely affect another and then restrict counsel from doing precisely the same thing in behalf of his own client. In this light, it is difficult to understand the Court's statement that its curtailment of appellant's cross examination in this area was done in part with the intention of protecting appellant and the other defendants. Such an argument is clearly specious. First, the issue of narcotics was already in the case and counsel had every right to dilute its effectiveness before the jury. Second, it is up to counsel and not the Court to make the strategic decision of whether such questioning would either

benefit or harm his client. It was counsel's choice to "open the door." In this case, counsel was precluded from making this strategic decision by the Court's unwarranted curtailment of his cross examination.

In any event, compelling counsel to sit down and cease his cross examination did far more harm to appellant's case than any question counsel might have asked of Granelli. As counsel pointed out, he still had many other areas to pursue on his cross examination. By ordering him to sit down, the Court virtually stripped appellant of any defense he might present. It must be emphasized, the only available defense in this case was to discredit the Investigators and the tool for such a line of attack was an effective and thorough cross examination.

At the hearing on the motion to set aside the verdict, the Court specifically noted that because counsel had continued with the line of cross examination which it forbade, it had the option of either curtailing the cross examination or holding counsel in contempt. The Court, to appellant's detriment, chose the former course of action. It is submitted that even assuming that counsel's questions were improper, the Court in ordering counsel to sit down abused its discretion. Such a punishment did not fit the offense and was an untoward punishment to the client and not the lawyer.

It appears that the Court chose to curtail appellant's cross examination because it was of the opinion that counsel had not really asked the questions in a contemptous manner, but had in fact been polite and deferential to the Court. Hence, the target of the punishment meted out by the Court was appellant and not his attorney since he lost the right to examine the chief witness against him.

The total curtailment of appellant's cross examination in this case cannot be characterized as merely an abuse of discretion on the part of the Court but was an action that resulted in the abridgement of an important constitutional right. Alford v. United States, 282 U.S. 687 (1931); Smith v. Illinois, 390 U.S. 129 (1966). This was not a case where counsel was merely rehashing testimony that had already been elicited. United States v. Miles, 480 F.2d 1215 (2d Cir. 1973); United States v. Turcotte, 515 F2d 145 (2d Cir.1975) Nor was this a case where the ground sought to be covered was extraneous to the issues involved. United States v. Kahn, 472 F.2d 272 (2d Cir. 1973); United States v. Bowe, 360 F.2d 1 (2d Cir. 1966). Further, this was not a situation wherein counsel had already consumed an inordinately large amount of time on his cross examination. United States v. Crosby, supra.

In cutting off appellant's cross examination, the Court effected a total emasculation of appellant's constitutional right to confront the witnesses against him.

Finally, the Government in this case cannot hide behind the harmless error standard in rationalizing the Court's actions. The Supreme Court rejected such potential arguments in Brookhart v. Janis, supra, when it stated:

> A denial of cross examination without waiver . . . would be constitutional error of the first magnitude and no amount of want or prejudice would cure it. 384 U.S. at p. 1

In sum, therefore, because of the complete curtailment of appellant's cross examination of the Government's chief witness, his conviction must now be reversed and a new trial ordered.

POINT II

THE DELUGE OF PREJUDICIAL TESTIMONY CONCERNING ONG'S EXPLOITS DEPRIVED APPELLANT WAH OF HIS DUE PROCESS RIGHT TO A FAIR TRIAL.

The present record is beseiged with accounts of Ong's illicit exploits over the past 20 years. Repeated conversations between Ong and the Investigators covering a myriad of inflammatory subjects were elicited before the jury although such testimony bore no connection to the charges set forth in the indictment. The sole purpose of the Government in adducing such prejudicial testimony was to insure the convictions of all the defendants. Under these circumstances, it is imcumbent upon this Court to reverse appellant's conviction and order a new trial.

The most damning evidence to confront the jury concerned Ong's outrageous statement that he had been arrested by the Police from Nadjari's office. Although this remark was in and of itself inherently prejudicial to all the defendants in this case, Ong felt obliged to embellish this statement by adding that the Police were also looking for Wah, but he had run away. This one statement undermined

appellant's entire defense. The jury was led to believe that Wah had also been bribing other oficials and thus would reject Wah's defense that he had been coerced into the present bribery scheme by the two Investigators. While the jury could possibly have believed coercion took place in one case, they would find it highly unlikely that Wah was also coerced into a bribery scheme by the officers from Nadjari's staff.

Moreover, Ong's statement that appellant had run away from the Police indicated to the jury that he had something to fear. That "consciousness of guilt" evidence is indeed incriminating in a criminal case cannot be denied and thus had to adversely effect the jury's determination of appellant's culpability. Even the most powerful instructions from the Court could not have eradicated the prejudice which inured to appellant's case.

Notwithstanding the unwarranted and inflammatory remarks concerning Nadjari, the jury was additionally confronted with Ong's damaging testimony concerning narcotics. While the Court was initially of the opinion that the prejudicial effects of such evidence far outweighed any conceivable probative value, the issue of narcotics

nevertheless did slip into this case. The jury could now suspect that appellant Wah was in some way connected to the underworld of drugs, especially in light of the Court's refusal to permit his counsel to refute such evidence (Point I).

Considering then, the introduction of evidence regarding the Nadjari arrest and testimony concerning drugs in connection with Ong's repeated tales of police corruption during the past 20 years, the primary issue of the case, i.e., the bribery, had to recede into the background while the evidence on other corruption became the focal point in this trial. The jury simply had to associate Appellant Wah with these numerous corrupt acts since he was often in the company of Defendant Ong.

Accordingly, such prejudicial evidence contaminated Appellant's right to a fair trial and now requires the reversal of his conviction.

POINT III

PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE, RULE 28(i), ALL RELEVANT ARGUMENTS RAISED IN THE BRIEFS FOR OTHER APPELLANTS ARE INCORPORATED BY REFERENCE.

CONCLUSION

FOR THE ABOVE STATED REASONS, APPELLANT'S CONVICTION SHOULD BE REVERSED AND A NEW TRIAL ORDERED.

Respectfully Submitted,

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2123b HERMAN (USA v. Wong Wah)

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 7 day of April , 19 76 at No. 1 St. Andrews PL. NYC deponent served the within Brief upon U.S. Atty. So. Dist. of NY 3 herein, by delivering ~~XX~~ true the Appellee copy thereof to h im personally. Deponent knew the person so served to be the person mentioned and described in said pap as the Appellee therein.

Sworn to before me,
this 7 day of April 19 76

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, ~~1975~~ 1977